

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

Skyler W.,

Claimant,

and

Inland Regional Center,

Service Agency.

OAH No. 2011090369

DECISION

Mary Agnes Matyszewski, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Bernardino, California, on October 12, 2011.

The Inland Regional Center (IRC) was represented by Leigh-Ann Pierce, Consumer Services Coordinator, Fair Hearing and Legal Appeals.

Sharon H, claimant's adoptive mother, represented claimant who was present for the hearing.

Oral and documentary evidence was received on October 12, 2011. The claimant's request to keep the record open to submit additional documents, which had been mailed but not yet received by IRC, was granted and the matter was submitted on October 26, 2011.

ISSUE

Should IRC fund respite services for claimant who lives in an ICF/DDN facility funded by Medi-Cal to allow him to visit his family home on weekends?

FACTUAL FINDINGS

Jurisdictional Matters

1. On August 11, 2011, IRC notified claimant that it was denying his request for respite services. On September 1, 2011, claimant appealed that decision and this appeal followed.

Evidence Presented At Hearing

2. Claimant, a three year old male, who is a regional center consumer, had resided in an ICF/DDN facility that is funded by Medi-Cal 24 hours per day, seven days a week, since suffering profound brain injuries due to shaken baby syndrome.

3. After claimant's injury, he was adopted by Sharon H., a loving, caring individual who has adopted three other special needs children. She also adopted claimant's twin sister, who was most likely exposed to drugs while in utero, resulting in many hyperactive and behavioral issues.

4. Sharon H. is requesting respite to enable her to bring her son home on weekends. She suffers from degenerative disk disease, is on disability, and requires assistance lifting her son and taking care of him. The evidence established that Sharon is a loving, devoted mother to whom claimant positively responds. Her desire to adopt and care for this child was both remarkable and inspirational.

5. IRC's Purchase of Service Policy, 1.2.4 (a), provides that respite is "'an interval of temporary relief or rest.' Respite care relieves families temporarily of the extraordinary duties necessary to meet the needs of the person with severe handicap. Respite services are designed to revitalize both the consumer and family while assisting the consumer to remain in the home."

LEGAL CONCLUSIONS

Burden of Proof

1. In a proceeding to determine eligibility, the burden of proof is on the claimant to establish he or she meets the proper criteria. The standard is a preponderance of the evidence. (Evid. Code, § 115.) Claimant had the burden of proving he qualified for respite services.

The Lanterman Act and Regional Centers

2. The Lanterman Developmental Disabilities Services Act (the Lanterman Act) is found at Welfare and Institutions Code section 4500 *et seq.*

3. The State Department of Developmental Services (the DDS) is the public agency in California responsible for carrying out the laws related to the care, custody and treatment of individuals with developmental disabilities under the Lanterman Act. (Welf. & Inst. Code, § 4416.) In order to comply with its statutory mandate, the DDS contracts with private non-profit community agencies, known as "regional centers," to provide the developmentally disabled with "access to the services and supports best suited to them throughout their lifetime." (Welf. & Inst. Code, § 4620.)

4. A regional center's responsibilities to its consumers are set forth in Welfare and Institutions Code sections 4640-4659.

5. Welfare and Institutions Code section 4418.6 provides in part:

"The department may establish within its family care program respite care services...Such respite care services may be available to both family home caretakers and to persons referred by the regional centers...respite care means temporary and intermittent care provided for short periods of time..."

6. Welfare and Institutions Code section 4686.5, subsection (c), provides in part:

"In order to provide opportunities for children to live with their families, the following procedures shall be adopted:

(1) The department and regional centers shall give a very high priority to the development and expansion of services and supports designed to assist families that are caring for their children at home...This assistance shall include...respite for parents..."

2009 Amendments to the Lanterman Act

7. Beginning in 2008, California experienced an unprecedented budget shortfall related to the severe national economic crisis. Every area of state government was impacted by this fiscal crisis, including the DDS. The Welfare and Institutions Code was amended to help meet the economic predicament by Assembly Bill 9 (AB 9).

8. Welfare and Institutions Code section 4659 was added which prohibited regional centers from purchasing any service that would otherwise be available from Medi-Cal.

Evaluation

9. Claimant resides in an ICF/DDN facility that Medi-Cal funds on a 24 hour, seven day a week basis. As such, because claimant lives in that facility, and not in the family home, his mother does not need a "break from his care," thereby making him ineligible for respite services. Moreover, since his care is funded by Medi-Cal, IRC may not fund it. While it is laudable that Sharon H. desires to have her son visit on weekends, respite was not intended for that purpose and the law does not allow IRC to fund the requested service.

ORDER

Claimant Skyler W.'s appeal from the Inland Regional Center's determination that he is not eligible for respite services is denied. Claimant is ineligible for respite services.

DATED: _____

MARY AGNES MATYSZEWSKI
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision. Both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within ninety days.